

**§ 190.04 Operation of the debtor's estate—general.**

(a) *Compliance with the Act and regulations.* Except as specifically provided otherwise in this part, the trustee shall comply with all of the provisions of the Act and of the regulations thereunder as if it were the debtor.

(b) *Computation of funded balance.* Using the information available, the trustee must compute a funded balance for each customer account which contains open commodity contracts as of the close of business each day subsequent to the order for relief until the final liquidation date. Such computation must be completed prior to noon on the next business day.

(c) *Records—(1) Maintenance.* Subject to the requirements of the Bankruptcy Code, records of the computations required by this part shall be maintained in accordance with § 1.31 of this chapter by the trustee for the greater of the period required by § 1.31 of this chapter or for a period of one year after the close of the bankruptcy proceeding for which they were compiled.

(2) *Accessibility.* The records required to be maintained by paragraph (c)(1) of this section shall be available during business hours to the Court, parties in interest, the Commission and the U.S. Department of Justice. At any time on or after the filing date, the commodity broker, or the trustee if a trustee has been appointed, shall be required to give the Commission and the U.S. Department of Justice immediate access to all records of the debtor, including records required to be retained in accordance with § 1.31 of this chapter and all other records of the commodity broker, whether or not the Act or this chapter would require such records to be maintained by the commodity broker.

(d) *Liquidation—(1) Order of liquidation—(i) Open outcry.* Liquidation of open commodity contracts held for a house or a customer account by or on behalf of a commodity broker which is a debtor shall be accomplished in accordance with § 1.38 of this chapter: *Provided*, That to the extent reasonably possible the trustee shall first liquidate all net positions and shall subsequently liquidate all long and short positions in the same commodity in the same deliv-

ery month on the same contract market in tandem: and, *Provided further*, That any covered commodity owned by a debtor shall be liquidated, to the extent reasonably possible, at the same time as its cover.

(ii) *Book entry.* Notwithstanding paragraph (1), in appropriate cases, upon application by the trustee or the affected clearing organization, the Commission may permit offsetting open commodity contracts to be liquidated, or settlement on such contracts to be made, by book entry. Such book entry shall offset such trades on the books of the commodity broker using an execution price equal to the weighted average of the liquidation prices for contracts in the same commodity for the same delivery month on the same contract market which are not matched on the books of the commodity broker, or if there are no such unmatched contracts, using the average of the opening price and the settlement price of contracts in the same commodity for the same delivery month on the same contract market as of the close of business on the market day of the order for relief.

(2) *Liquidation only.* Nothing in this part shall be interpreted to permit the trustee to purchase or sell new commodity contracts for customers of the debtor except to offset open commodity contracts or to transfer any transferable notice received by the debtor or the trustee under any commodity contract: *Provided, however*, That the trustee may, in its discretion and with approval of the Commission, cover uncovered inventory or commodity contracts of the debtor which cannot be liquidated immediately because of price limits or other market conditions, or may take an offsetting position in a new month or at a strike price for which limits have not been reached.

(e) *Other matters—(1) Determination as to bona fide hedges.* In determining which commodity contracts are eligible to be held open for transfer pursuant to customer instruction, the trustee may rely on the designation in the accounting records of the commodity broker that the account for or on behalf of which the contract is held is a hedging account. Commodity contracts

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maintained in a hedging account may be treated by the trustee as specifically identifiable.

(2) *Disbursements.* The trustee shall make no disbursements to customers prior to final distribution except with approval of the court or in accordance with § 190.08(d).

(3) *Investment.* The trustee shall promptly invest the equity resulting from the liquidation of commodity contracts, and the proceeds of the liquidation of specifically identifiable property, in obligations of the United States and obligations fully guaranteed as to principal and interest by the United States, and may similarly invest any customer equity in accounts which remain open in accordance with § 190.03: *Provided*, That such obligations are maintained in a depository located in the United States, its territories or possessions.

(4) *Margin calls—reasonable time.* Except as otherwise provided in this part, a reasonable time for meeting margin calls made by the trustee shall be deemed to be one hour, or such greater period not to exceed one business day, as the trustee may determine in its sole discretion.

(5) *Management of Long Option Contracts.* Subject to the applicable liquidation provisions the trustee must use its best efforts to assure that a long option contract with value does not expire worthless.

(Secs. 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 of the Commodity Exchange Act, as amended by the Futures Trading Act of 1982, Pub. L. 97-444, 96 Stat. 2294 (1983), 7 U.S.C. 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1976 & Supp. V. 1981 and Pub. L. 97-444); secs. 761–766 of the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Act Amendments, Pub. L. 97-222, 96 Stat. 235 (1982), 11 U.S.C. 761–766 (Supp. V. 1981 as amended by Pub. L. 97-222))

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### § 190.05 Making and taking delivery on commodity contracts.

(a) *General.* (1) In the event that the trustee is unable to liquidate an open commodity futures contract subject to physical delivery or an option on a physical commodity, which cannot be settled in cash, prior to the last day of trading in that contract as required by §§ 190.02(f)(1) and 190.03(b)(5), the trustee

must use its best efforts to prevent property which is to be delivered for or on behalf of a customer to fulfill that contract, or property for which delivery is being taken with respect to a customer pursuant to that contract, from becoming part of the debtor's estate.

(2) Delivery account shall mean any account prominently designated as such in the records of the debtor which contains only the specifically identifiable property associated with delivery set forth in § 190.01(kk) (3), (4), and (5), except that with respect to § 190.01(kk) (4) and (5), delivery need not be made or taken and exercise need not be effected for such property to be included in a delivery account.

(3) The portion of the price or the proceeds of a commodity contract upon delivery which is not specifically identifiable property under § 190.01(kk) (4) and (5) must be distributed pro rata under section 766(h) of the Code.

(b) *Contract market rules for deliveries on behalf of a customer of a debtor.* Except in the case of a commodity futures or option contract which is settled in cash, each contract market shall adopt, maintain in effect and enforce rules which have been approved by the Commission in accordance with section 5a(a)(12) of the Act and § 1.41 of this chapter, which:

(1) Permit the making and taking of delivery to fulfill a commodity futures contract for a physical commodity or an option on a physical commodity, which has not become part of the debtor's estate on the date of the entry of the order for relief but with respect to which commodity contract:

(i) Trading has ceased on the date of the entry of the order for relief;

(ii) Notice of delivery has been tendered on or before the date of the entry of the order for relief; or,

(iii) Trading ceases before it can be liquidated by the trustee, to be effected directly between the customer of the debtor and the person identified by the clearing organization as the party to whom delivery should be made or from whom delivery should be taken by such customer of the debtor without intervention of the trustee and without including such physical commodity or